

C. **Qualified Stretch Trust.** Over the last decade, most of our clients have retired with significant monies invested in qualified accounts. A qualified account is an IRA, 401k, 403b, or other like account that qualified for income tax deferral when deposited from a paycheck. These accounts have grown to hold large amounts of money. Coupled with the decline in real estate value, these accounts present the largest asset of our client base.

While designating a spouse, with the children as alternate, works well in a long term marriage, the same may not be true for a second marriage or where a single person has adult children who are to receive distributions at death, or a widower or widowed grandparent who wishes for his or her grandchildren to receive distributions when they pass. In such cases, the client may want to consider a qualified stretch trust. A qualified stretch trust instructs the trustee to pay income for life to a second spouse or to a surviving child and then the residual to children or grandchildren.

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2012 ANNUAL PLANNING NEWSLETTER

Dear Clients and Friends:

We hope you enjoy our annual newsletter. If you believe that your friends and relatives would appreciate it as well, please feel free to provide copies to them. Our newsletter is now available on our website at www.elderlaw.us. If you would prefer to receive an electronic copy of the newsletter, please contact Jayne Weddington at jweddington@elderlaw.us and indicate your preference for the e-mail version. This newsletter aims to keep clients informed of recent news and updates in the areas of elder law and estate planning.

I. **Announcements.** As some of you may be aware, our long time Medicaid paralegal, Bridget Hunsinger left the firm due to her husband being promoted and transferred to Portland, Oregon. We will miss her and wish her well. We have been lucky to find a replacement, Beth Blatt, with vast experience in Medicaid having worked in the field for almost 5 years as a Medicaid case worker. Along with Beth, we have added Cheryl Johnson as a legal assistant, who has over 10 years of legal experience and Laura O'Donnell as a law clerk, who has over 18 years of experience in the legal field. Congratulations to Dave Arndt, our law clerk for passing the bar exam!

II. **Real Estate held in Revocable Living Trust(s).** In a recent decision by the Ohio Third District Court of Appeals in **Williams v. Ohio Department of Job and Family Services**, (3rd Dist. Ct. App., October 9, 2012), the Court held that real property held in a revocable living trust, created by dad and mom and then transferred back to dad and mom, made the house a countable resource for Medicaid application purposes rather than being an exempt asset. **IF YOU HAVE YOUR HOUSE HELD IN YOUR REVOCABLE TRUST, WE SHOULD TRANSFER IT BACK TO YOU, USING JOINT AND SURVIVOR LANGUAGE OR TRANSFER ON DEATH TO YOUR TRUST AS A SECONDARY BENEFICIARY.** Although we disagree with the ruling, the prudent action is to re-title your property as soon as possible.

III. **Tax Changes.**

A. **Ohio Estate Tax Repealed.** Effective January 1, 2013, the Ohio estate tax has been repealed. Previously, any estate over \$338,000 was taxed at approximately 6% without a surviving spouse. With a surviving spouse, there was no tax.

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B. Federal Estate Tax. The Bush tax cuts are set to expire on December 31, 2012. With the upcoming election and the lame duck Congress, there are three scenarios that may occur. It is important for all clients to monitor the changes to the Federal Estate Tax over the next several months and into the beginning of 2013.

Scenario 1: Federal estate tax returns at the \$1 million credit level with 55% tax rate. If Congress takes NO action and the Bush tax cuts are allowed to expire at the end of 2012, any estate over \$1 million would be subject to a 55% tax rate.

Scenario 2: Congress sets the estate tax credit at \$3.5 million with estate tax rate at 45%. The estate tax credit was \$3.5 million through 2010. If the Bush tax cuts were merely extended across the board, the \$3.5 million credit and 45% tax rate would be in effect.

Scenario 3: Congress keeps the estate tax credit at \$5 million with an estate tax rate of 35%. During the lame duck session of 2010, Congress extended the Bush tax cuts for all but also increased the estate tax credit to \$5 million and the gift tax credit to \$5 million. These will expire at the end of 2012 unless otherwise extended.

Please note that the gift tax credit was increased from \$1 million to \$5 million which is still effective through December of 2012. Even under a mere extension of the Bush tax cuts, the previous gift tax credit was \$1 million.

If you have over \$2 million in assets, it would behoove you to consider gifting before the end of December, 2012.

C. Income Tax. Because of the uncertainty in income tax rates on earned capital gains income and unearned income in the future, it is important for all clients to review the sale of capital assets before year-end when rates are set. Regardless of what happens with the election, income taxes will change in 2013 and beyond. Presently, the capital gains tax rate is 15% so it would be beneficial for all persons with deferred income, capital gains or other income in tax deferred instruments to consider liquidating those assets. (See your investment advisor to discuss further.)

IV. Affordable Care Act. Recently, the U.S. Supreme Court found the Affordable Care Act, also known as "Obamacare" to be constitutional. It also found other parts of the Act to be unenforceable or unconstitutional. (Please visit our website for our more detailed analysis.) These are highlights:

A. Extension of Coverage for Children up to Age 26. For those with healthy children who are uninsured, this is a benefit that costs the government or the insured very little. While the insurance industry will likely increase premiums and effectively increase their client base by a large percentage, the cost to insure most adult children 25 and under will not be significant. For those with a child with disabilities, the benefit of maintaining private health care insurance is significant. Assuming that the parents' employer offers coverage and the parents are not retired, insuring the child through age 25 is not a significant cost. That adult child can remain on the plan even if they are married, whether they are living with a parent, whether they are living independently, whether they are in school or whether they are employed or not employed.

B. Healthy Disabled Children Over Age 26. This population may be better served with lower premiums by using the open enrollment periods for most health insurance companies. Many employers, including Home Depot, offer health care coverage even for part-time employees. For a healthy employed person with disabilities (which includes many mildly and moderately mentally disabled individuals who are employed), the purchase of the insurance either through their

earnings or by their parents will likely provide much better coverage than what is provided through the Medicaid program.

C. High Risk Pool Insurance and Insurance for the Disabled Attaining Age 50. As of 2014, companies are not permitted to deny coverage based upon a pre-existing condition. However, the company will be permitted to charge higher premiums. The new law provides that premiums cannot be more than three times than the regular rates. This could make insurance prohibitive for many individuals, especially considering someone whose premium is already \$1,200 per month, and it could increase to \$3,600 per month.

D. 55 – 64 Medicare Coverage. The provisions in the new Affordable Care Act are not specific as to how it will help those uninsured individuals with health care needs between the ages of 54 and 65. The bill provides that a certain amount will be set aside for employers to assist in providing health care benefits for early retirees, but is not clear as to the terms. Several large employers have already enrolled in this program in hopes of obtaining some of the subsidies.

E. Using Waivers to Obtain Medicaid Secondary Coverage. As many individuals with disabilities receive Waiver benefits of one sort or another through the local agencies, the Medicaid benefits are often overlooked as the parents or the individuals themselves maintains private insurance. Using Medicaid to pay large deductibles or co-pays will become more important.

F. Insurance Exchanges. States have been given the option of creating an insurance network or exchange. This exchange has some benefit for those that are uninsured, small companies and for single individuals who wish to obtain coverage. If a state does not initiate this exchange, the federal government has the ability, and perhaps the duty, to implement the exchange for that state.

G. Medicaid Expansion. One of the most controversial portions of the Act is the requirement that the states expand Medicaid coverage with the federal government paying for the first three years, and then additional funding being reduced thereafter. The U.S. Supreme Court found that this provision was unconstitutional. Approximately 40% of those uninsured currently were to be covered through this Medicaid expansion. The states still have the option of enlisting and covering uninsured individuals.

V. Other Legal Highlights.

A. New Ohio Uniform Power of Attorney Act. Recently, the legislature passed the Uniform Power of Attorney Act for purposes of making a uniform form available to the general public to use for granting of powers of attorney. A durable financial power of attorney allows a person to act on behalf of the grantor (you) on a variety of financial decisions including, but not limited to, your monthly income and expenses, your investments, your beneficiaries as previously designated on IRAs, 401ks, 403bs, life insurance, savings bonds and other financial investments that allow for a contractual beneficiary designation.

B. Medicaid Waivers. The Kasich administration has initiated and funded a Medicaid Waiver program for assisted living residents. Not all assisted living facilities are participating in this program; however, for those that are situated in a nursing home and wish to access the Medicaid Assisted Living Waiver program, they should apply for benefits prior to moving from the nursing home to the assisted living facility. This program is still in its early stages and should be of assistance to those who are currently situated in a nursing home but may be able to rehabilitate sufficiently to move to assisted living. Further, for those with inadequate income to pay for assisted living and are currently in a nursing home, this may also be a program which allows some to relocate to a less restrictive environment while saving taxpayers approximately \$3,500 per month.